

# **COMPLIANCE AUDIT REPORT**

**STATE OF MAINE  
WORKERS' COMPENSATION BOARD**



**GATES MCDONALD  
OCTOBER 15, 2003**

**Monitoring, Audit & Enforcement (MAE) Division**

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# CONTENTS

SUMMARY .....	2
PENALTIES.....	9
♦ Penalties Allowed by Law (Payable to the Workers' Compensation Board).....	9
39-A M.R.S.A. Sec. 359(2).....	9
39-A M.R.S.A. Sec. 360(1)(A) .....	9
39-A M.R.S.A. Sec. 360(1)(B) .....	9
39-A M.R.S.A. Sec. 360(2).....	10
INDEMNITY BENEFITS.....	11
A. Prompt Initial Payment of Benefits.....	11
B. Prompt Subsequent Payment of Benefits .....	11
C. Accuracy of Average Weekly Wage.....	11
D. Accuracy of Weekly Benefit Rate.....	11
FORM FILING.....	12
A. First Report (WCB-1).....	12
B. Wage Statement (WCB-2).....	12
C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A).....	12
D. Memorandum of Payment (WCB-3).....	12
E. Discontinuance or Modification (WCB-4).....	13
F. Discontinuance or Reduction Of Compensation (WCB-8) .....	13
G. Notice of Controversy (WCB-9).....	13
H. Statement of Compensation Paid (WCB-11).....	14

## SUMMARY

The Audit Division of the Maine Workers' Compensation Board examined 61 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Gates McDonald provides full-service claims management for a number of insurance companies and self-insured customers. The following entities had claims that were included in this audit:

- Ace American
- Fireman's Fund
- Old Republic
- Proctor & Gamble
- Reliance

Employers (serviced by Gates) report all injuries to the 24-hour reporting service at Prism Intake Center, either by phone or by fax. The intake center then completes the WCB-1, Employer's First Report of Occupational Injury or Disease form (for Maine claims) and faxes it to Gates' field office in Burlington, Massachusetts.

The Burlington office provides claims-handling services, submits payment requests, and is responsible for all form submissions (for Maine claims). All payments (both medical and indemnity) are issued and mailed from a central check-processing center, located in Hilliard, Ohio.

Our sample was drawn only from those claims with dates of injury during 2001, which were managed by Gates McDonald during 2001.

Of the 61 claims files audited:

- Nineteen were "lost time" claims:
  - ❖ Of the 19 "lost time" claims audited, 10 were compensated.
    - Of those 10 compensated claims, two were compensated as a result of late-filed WCB-9, Notice of Controversy forms (mandatory payments).
- Thirty-two were "medical only" claims.
- Ten were "incident only"<sup>1</sup> claims.

Our on-site audit of Gates McDonald began January 7, 2003 and ended January 9, 2003.

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<sup>1</sup> "Incident only" claims incur no medical expenses and less than a day of lost time.

## SUMMARY (continued)

The compliance tables found on pages 11 through 14 of this report are representative of our findings as of January 9, 2003. Since that time, the Audit Division has requested additional information, missing form filings, form corrections, and payment adjustments. The preliminary request was hand-delivered January 9, 2003 at the time of the Informal Exit Conference, and had a deadline of January 23, 2003. We received a partially complete response to that request on January 23, 2003. The next request was sent to Gates via e-mail on January 23, 2003, and had a deadline of February 6, 2003. It asked for forms and corrections not included in the preliminary request, and reminded Gates of the information still not received from the preliminary request. We received a partially complete response to that request on February 6, 2003. The Exit Conference, dated May 13, 2003, contained a complete listing of all outstanding requests. Since that time, Gates has submitted most of the missing forms, corrections and information identified in the Exit Conference.

Following is a discussion of the aforementioned compliance tables and of the steps taken since January 9, 2003 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by our audit.

- Form filing compliance ranged from zero percent to 100 percent.
  - ◆ One hundred percent compliance was found in the filings of WCB-8, Certificate of Discontinuance or Reduction of Compensation forms.
    - Although, the WCB-8 shown as “Filed” was filed prior to audit, its original version was not sent by certified mail, and it reported an incorrect “Amount Paid”. Amended copies were later sent by certified mail, but they too incorrectly reported the “Amount Paid”.
  - We believe that Gates does understand the filing requirements of §205(9)(B). Their failure to send the original version of that WCB-8 by certified mail appears to be an isolated incident.
  - ◆ Ninety-percent compliance was found in the filings of WCB-4, Discontinuance or Modification of Compensation forms.
    - The WCB-4 shown as “Not Filed” had not been filed at the time of our on-site work.
    - ❖ Gates has since filed that form.
  - ◆ Seventy-one percent compliance was found in the filings of WCB-9, Notice of Controversy (NOC) forms for “lost time” claims.
    - Gates made mandatory payments (pursuant to Rule 1.1.2) on both of the claims where the NOC was “Filed Late”.
  - ◆ Sixty-three percent compliance was found in the filings of WCB-1, Employer’s First Report of Occupational Injury or Disease forms.

## SUMMARY (continued)

- The three First Reports shown as “Filed Late” had been filed prior to our on-site work.
- Three of the four First Reports shown as “Not Filed” represent controverted “medical-only” claims that had not been reported to the Board at the time of our on-site work.

*It appears that Gates was not aware of their obligation to file First Reports for controverted “medical-only” claims.*

- The fourth “Not Filed” First Report represents a non-compensable “lost time” claim that had not been reported to the Board at the time of our on-site work.

All four “Not Filed” First Reports have since been filed in response to our requests.

Gates received all of the preceding “Filed Late” and “Not Filed” First Reports timely (from the corresponding employers).

- ◆ Fifty-percent compliance was found in the filings of WCB-3, Memorandum of Payment (MOP) forms.

- The four MOPs shown as “Filed Late” had been filed prior to our on-site work.
- The MOP shown as “Not Filed” had not been filed at the time of our on-site work.

- ❖ Gates has since filed that form.

- ◆ Forty-percent compliance was found in the filings of WCB-9, Notice of Controversy forms for “medical-only” claims.

- All three “Not Filed” NOCs had been sent to the corresponding injured employees prior to our on-site work, but had not been filed with the Board.

- ❖ Those three forms have since been filed in response to our request.

*It appears that Gates was not aware of their obligation to file “medical-only” NOCs with the Board.*

- ◆ Seven-percent compliance was found in the filings of WCB-2, Wage Statement forms.

- The seven Wage Statements shown as “Filed Late” had been filed prior to our on-site work.
- The six Wage Statements shown as “Not Filed” had not been filed at the time of our on-site work. This Audit Division requested those forms, and imposed a deadline for Gates to respond to those requests.

## SUMMARY (continued)

- ❖ Five of those Wage Statements were filed prior to the deadline.
- ❖ Although the sixth Wage Statement was not filed prior to the deadline, it has since been filed.
- ◆ Zero-percent compliance was found in the filings of WCB-2A, Schedule of Dependent(s) and Filing Status forms, and WCB-11, Statement of Compensation Paid forms.
  - The seven WCB-2A forms shown as “Filed Late” had been filed prior to our on-site work.
  - The seven WCB-2A forms shown as “Not Filed” had not been filed at the time of our on-site work. This Audit Division requested those forms, and imposed a deadline for Gates to respond to those requests.
  - ❖ Four of those WCB-2A forms were filed prior to the deadline.
  - ❖ Although the other three WCB-2A forms were not filed prior to the deadline, they have since been filed.
  - The seven WCB-11 forms shown as “Filed Late” had been filed prior to our on-site work.
  - The three WCB-11 forms shown as “Not Filed” had not been filed at the time of our on-site work. This Audit Division requested those forms, and imposed a deadline for Gates to respond to those requests.
  - ❖ Two of those WCB-11 forms were filed prior to the deadline.
  - ❖ Although the third WCB-11 was not filed prior to the deadline, it has since been filed.

It appears that Gates did not have effective systems in place to ensure timely filings of the WCB-2, WCB-2A or WCB-11 forms. Furthermore, it appears that they were not aware of their obligation to file wage information for controverted claims when a claim for compensation had been made. Current filing requirements for wage information and WCB-11 forms were discussed in the Exit Conference (dated May 13, 2003).

- Incorrect dates were reported in Box 24 of the initial MOPs for four of the ten compensated claims.
  - ◆ Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP), should accurately reflect the date that the initial indemnity payment is sent to the employee.
    - This issue was discussed in the Exit Conference (dated May 13, 2003).
- Thirty-percent of the initial indemnity payments were made timely.

## SUMMARY (continued)

- ◆ One of the initial indemnity payments shown as “29+” represents a claim where compensation was not paid until 18 days after it became due and payable.
- ◆ The other initial indemnity payment shown as “29+” represents a controverted claim where the NOC was filed late, and the “mandatory” payment was not made until 101 days after the employer was notified of the incapacity.
- Twenty-three and eight-tenths percent of subsequent payments were made timely.
  - ◆ Non-weekly subsequent indemnity payments were found in all five (audited) claims where subsequent payments were made. It appears that Gates routinely made biweekly indemnity payments, and that some payments were made three, four and even five weeks apart.
    - This issue was discussed in the Exit Conference (dated May 13, 2003).
- The average weekly wage (AWW) was calculated correctly for 50 percent of the compensated claims audited. The reasons for the incorrect AWWs are as follows:
  - ◆ At the time of our on-site work, Gates’ paper file (for one claim) contained a different Wage Statement (WCB-2) than the one that had been filed with the Board. The WCB-2 filed with the Board contained 38 weeks of earnings. Gates’ version of the form contained only 11 weeks of earnings, and had been used to calculate the AWW. Although that WCB-2 created a lower AWW and rate, the employee was actually overpaid (\$20.47), because the provisional payment (made prior to the AWW calculation) was greater than the amount of benefits due.
  - ◆ The AWW for one claim was established by Board decree, but the “mandatory” payment had already been made using a lower AWW (and rate) prior to that decree. However, that “mandatory” payment extended beyond the date the NOC was filed. Therefore, the employee was actually overpaid (\$1442.28).
  - ◆ Earnings for the employees’ weeks-of-hire were included in the AWW calculations for three claims. Their inclusion reduced the AWWs and weekly benefit rates. However:
    - One employee was paid an extra day of compensation. Therefore, the aggregate of these two errors resulted in a small overpayment (\$.93).
    - Additional calculation errors, which further reduced the AWWs and rates, were found in both of the other claims. One claim was underpaid \$23.24 and the other was underpaid at least \$546.03 (This is the amount of the adjustment that Gates made voluntarily, upon notification of the AWW/rate correction. Despite multiple requests, we were unable to obtain the post-injury wage information necessary to accurately calculate partial benefits.)

## SUMMARY (continued)

- ❖ Corrected forms and proof of payment adjustments were timely filed for both of those claims in response to a request from this Audit Division.
- Weekly benefit rates were calculated correctly for thirty-percent of the compensated claims audited.
  - ◆ The “Unknown” rate could not be calculated because no WCB-2A form had been filed as of January 9, 2003.
    - That missing form has since been filed, and it confirms that the rate used by Gates was correct.
  - ◆ One “Incorrect” rate was calculated by multiplying the AWW by 60% (rather than using the Benefit Table). That rate was higher than the maximum benefit level provided by §211, and resulted in an overpayment of \$7.96.

Based on the fact that the employee’s pre-injury wages were originally submitted on a Massachusetts form, it appears that Gates probably applied Massachusetts law rather than Maine law to determine the rate for this claim.

- ◆ The other five “Incorrect” rates are directly related to the incorrect AWWs referenced above.
- In addition to the incorrect payments listed above:
  - ◆ One indemnity claim was turned over to Guaranty Fund Management Services (due to carrier liquidation) while outstanding benefits (four days of the waiting period, plus one other day, plus three weeks of partial compensation) were still due. Insufficient information was available to calculate the partial benefits for that employee, but the five days previously mentioned, represents an underpayment of \$78.05.
    - Gates is unable to correct this discrepancy because they no longer administer this claim.
  - ◆ Partial benefits were calculated incorrectly, and the wrong number of days was paid for one claim. This resulted in an underpayment of \$44.73.
    - Upon notification of this discrepancy, Gates promptly submitted proof of the payment adjustment, along with an amended WCB-11, Statement of Compensation Paid.
  - ◆ One claim was overpaid (\$212.27) because a (high) provisional rate was used to calculate benefits prior to Gates’ receipt of the wage information for that claim.

The aggregate of all overpayments and underpayments previously mentioned in this summary results in a net overpayment of \$991.86.

Only one of the ten compensated claims (that were included in this audit) was paid correctly.



## **SUMMARY (continued)**

The Claims Manager for Gates' Burlington office was replaced during the fall of 2002. Her successor seems very concerned about improving Gates' compliance performance. At the time of the Informal Exit Conference, the new Claims Manager and her staff were very interested in learning where the deficiencies were so that they could take steps to correct them. Therefore, we expect to see considerable improvement in Gates' compliance performance when future audits are done.

The penalties listed on pages 9 and 10 of this report are representative of compliance as measured on February 6, 2003. (February 6, 2003 was the deadline given for response to the Audit Division's request for information, forms and corrections needed.)

## PENALTIES

### ◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

➤ The Deputy Director of Benefits Administration has the authority to, and may refer Gates McDonald to the Abuse Investigation Unit to pursue penalties under §359(2) for the following reasons, (including, but not limited to):

- Required forms not being filed with the Board
- Subsequent indemnity payments being made bi-weekly (or later) rather than weekly
- Incorrect wage calculations

Possible penalty exposure: \$10,000.00

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

➤ Five (5) forms were not filed (\$500.00).

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

➤ Forty-one (41) forms were filed late (\$4,100.00).

## **PENALTIES (Continued)**

39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	3	30%
15-28	Days		5	50%
29+	Days		2	20%
Total Due			10	100%

### B. Prompt Subsequent Payment of Benefits

			2001	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	5	23.8%
8-14	Days		10	47.6%
15 +	Days		6	28.6%
Total Due			21	100.0%

### C. Accuracy of Average Weekly Wage

			2001	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	5	50%
Incorrect			5	50%
Total			10	100%

### D. Accuracy of Weekly Benefit Rate

			2001	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	3	30%
Incorrect			6	60%
Unknown			1	10%
Total			10	100%

## FORM FILING

### A. First Report (WCB-1)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	12	63%
Filed Late		3	16%
Not Filed		4	21%
Total		19	100%

*In addition to the First Reports listed above, a First Report was filed, but not required for an injury where the employee lost less than a day's work, and made no claim for compensation.*

### B. Wage Statement (WCB-2)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	1	7%
Filed Late		7	50%
Not Filed		6	43%
Total		14	100%

### C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	0	0%
Filed Late		7	50%
Not Filed		7	50%
Total		14	100%

### D. Memorandum of Payment (WCB-3)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	5	50%
Filed Late		4	40%
Not Filed		1	10%
Total		10	100%

## FORM FILING (Continued)

### E. Discontinuance or Modification (WCB-4)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	9	90%
Not Filed		1	10%
Total		10	100%

### F. Discontinuance or Reduction Of Compensation (WCB-8)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	1	100%
Not Filed		0	0%
Total		1	100%

*In addition to the WCB-8 form listed above, a WCB-8 form was filed, but not required, to discontinue a "mandatory" payment that was made in accordance with Rule 1.1(2).*

### G. Notice of Controversy (WCB-9)

Lost Time Claims		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	5	71%
Filed Late		2	29%
Total		7	100%

*In addition to the NOCs listed above, a NOC was filed, but not required for an injury where the employee lost less than a day's work, and made no claim for compensation.*

Medical Only Claims		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	40%
Not Filed		3	60%
Total		5	100%

## FORM FILING (Continued)

### H. Statement of Compensation Paid (WCB-11)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	0	0%
Filed Late		7	70%
Not Filed		3	30%
Total		10	100%